

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**136 Campus Cooperative Association,**  
Petitioner-Appellant,

**v.**

**City of Ames Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 12-100-0471**  
**Parcel No. 09-04-352-270**

On August 29, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, 136 Campus Cooperative Association, was represented by attorney Jess W. Vilsack, Nyemaster Goode, P.C. in Des Moines. Ames City Attorney Judy Parks represented the Board of Review. Both parties submitted evidence in support of their position. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

136 Campus Cooperative Association appeals from the City of Ames Board of Review decision reassessing its property located at 136 Campus Avenue, Ames, Iowa. According to the property record card, the subject property consists of a two-story, apartment building with five units and 3544 square-feet of above-grade building area and was built in 1918. The property is also improved by 1200 square feet of concrete paving.

The real estate was classified as commercial for the assessment of January 1, 2012, and valued at \$235,900, representing \$84,700 in land value and \$151,200 in improvement value. This was a change from the subject property's residential classification that was in place from 2006 to 2011.

Campus Cooperative protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2) and that the property was misclassified under Iowa Code section 441.37(1)(a)(3). It asserted the property's classification should be residential and its fair market value was \$150,000. The Board of Review denied the petition.

Campus Cooperative then appealed to this Board and reasserted its claims.

The sole issue addressed by this Order is whether Campus Cooperative's real estate should have a residential classification. At hearing, Campus Cooperative reserved its right to produce evidence on its over-assessment claim after this Board determines the property's correct classification. Section 449A.1 of the Iowa Code, in pertinent part, provides:

Any two or more persons of full age, a majority of whom are citizens of the state, may organize themselves for the following or similar purposes: Ownership of residential, business property on a cooperative basis. A corporation is a person within the meaning of this chapter. The organizers shall adopt, and sign and acknowledge the articles of incorporation, stating the name by which the cooperative shall be known, the location of its principal place of business, its business or objects, the number of directors to conduct the cooperative's business or objects, the names of the directors for the first year, the time of the cooperative's annual meeting, the time of the annual meeting of its directors, and the manner in which the articles may be amended. The articles of incorporation shall be filed with the secretary of state who shall, if the secretary approves the articles, endorse the secretary of state's approval on the articles, record the articles, and forward the articles to the county recorder of the county where the principal place of business is to be located

Campus Cooperative argues that two individuals, Mike Frisk and Mike Grove, organized the cooperative association in late 2005. The articles of incorporation (Articles) named Michael Frisk as the organizer and named both Frisk and Grove as the initial directors. The Articles were signed only by Frisk on or about December 30, 2005. The Articles were filed with the Iowa Secretary of State, where they were approved, endorsed, and recorded by the Secretary.

Subsequently, the Articles were forwarded to the county recorder for recording. The organizational meeting minutes were signed by both Frisk and Grove the same day. Thereafter, Campus Cooperative apparently functioned from 2006 to 2011 as a Chapter 449A cooperative housing association without question and was given a residential classification by the Ames City Assessor as provided in section 441.21(11).

Both Frisk and Grove testified on behalf of Campus Cooperative. Frisk testified that he and Grove owned the subject property in an LLC before 2005 when the housing cooperative was formed. He said it was their intent to both act as organizers and directors. Frisk reported that both he and Grove reviewed the Articles (Exhibit 1) and were present when he signed them. The organizational meeting was held the same day and both men signed the meeting minutes. (Exhibit 2). The minutes approved, ratified, and adopted all actions of the organizers, including the preparation and filing of the Articles.

Grove testified that he and Frisk were the only partners of the LLC prior to 2005 when they decided to convert the LLC to a cooperative. Grove reported the proportionate 50/50 ownership in the LLC was continued with the conversion. Grove testified that he and Frisk met, reviewed, and approved the Articles together. Their intention was to form a housing cooperative while maintaining equal ownership interest and there was no reason why only Frisk signed the Articles.

The assessor's office mailed the 2012 assessment notice to Frisk and Grove on April 13, 2012. The notice showed the Assessor changed the property's classification to commercial and reduced the value from \$277,400 to \$235,900. On April 12th, Grove and Frisk signed and filed amended articles of incorporation as organizers to cure the defect in the original Articles. On the

same date, attorney Bruce Baker of the Nyemaster Goode Law Firm sent a letter along with a copy of the amended Articles to Doug Marek, then City Attorney for the City of Ames.

The Board of Review argues the cooperative association was not properly organized because the Articles were not signed by both Frisk and Grove as required. *Krupp Place 1 Co-op, Inc. v. Board of Review of Jasper County*, 801 N.W.2d 9 (Iowa 2011) (concluding section 441.21(11) requires property owned by residential cooperatives, *properly organized* under chapter 499A, to be classified as residential). Based on the *Krupp Place* decision, the Assessor consulted with City Attorney Marek and determined that Campus Cooperative did not meet this organizational test because its Articles contained only one organizer signature. *See* Letter from Douglas R. Marek, City Attorney, to Mr. Jackson and Members of the Board of Review (May 22, 2012). Marek's letter also indicated his opinion that subsequent amendment of the Articles does not correct the organizational defect for the 2012 tax year because section 499A.10 "provides that amendments are effective from the date of filing such change or amendment for record." The Board of Review thus asserts that since chapter 499A specifically states at least two organizers must adopt, sign, and acknowledge the Articles, Campus Cooperative's filing was defective from the start regardless of its filing and status as "duly incorporated" by the Secretary of State.

The Board of Review did not present any testimony.

This Board permitted the Board of Review to submit a post-hearing brief, which was filed on September 13th. This post-hearing brief was permitted because Campus Cooperative filed a hearing brief on the date of the hearing, to which the Board of Review did not have an opportunity to respond. Subsequent to the Board of Review's post-hearing brief, Campus Cooperative filed a Motion for Leave to Respond to Appellee's Post-Hearing Brief on September

19th, along with its Response to Appellee's Post-Hearing Brief. Campus Cooperative contends the Board of Review's Post-Hearing Brief raises a new legal theory and therefore it should be permitted to enter a response. We grant Campus Cooperative's Motion, incorporate the responsive brief into the record, and next discuss the legal arguments proffered by both parties.

### Campus Cooperative's Argument

Campus Cooperative argues long-standing, Iowa law requires substantial, not complete, compliance when forming a legal entity. It cites incorporation cases that hold substantial compliance, as opposed to complete compliance, is necessary under the terms of incorporation statutes. *Berkson v. Anderson*, 87 N.W. 402, 403 (Iowa 1901); *Wilkin Grain Co. v. Monroe Cnty. Co-op Ass'n*, 223 N.W. 899, 902 (Iowa 1929). We note that, despite its citation to incorporation cases, Campus Cooperative indicates that "the principles of substantial compliance are equally applicable to Chapter 499A." (Hearing Brief, p. 4). It cites no support, however, for the application of the substantial compliance doctrine to Chapter 499A.

Campus Cooperative asserts there are two fundamental requirements for substantial compliance to form a legal entity, which should apply to forming a cooperative: (1) that the parties sufficiently expressed their intent to form a specific legal entity, i.e. a housing cooperative; and (2) that the parties sufficiently notified the public of their intent by filing their articles of incorporation with the Secretary of State. *Wilkin*, 223 N.W. at 899-904; *Berkson*, 87 N.W. at 402-403. Applying this case law, Campus Cooperative asks this Board to find that the signature of one organizer was substantial compliance and resulted in a properly organized cooperative under chapter 499A.

### Board of Review's Argument

As previously discussed, the Board of Review argues that Campus Cooperative is not properly organized under Chapter 499A. It appears to contend that strict, not substantial, compliance is required under the Chapter. Secondly, the Board of Review argues that even if the substantial compliance doctrine is applied here, the signature of only one organizer is not substantial compliance with the requirements of Chapter 499A. In support of its position, the Board of Review cites to *Pointe of View Cooperative v. Board of Review of Iowa City*, a district court case requiring the application of *Krupp*'s organizational test and involving a determination of whether a trust constitutes a "person" under Chapter 499A. Case No. EQCV 072145 (Iowa Dist. Ct. for Johnson Cnty., Feb. 29, 2012).

### ***Conclusion of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof.

§ 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Campus Cooperative asserts its property is misclassified and its actual classification should be residential. Iowa Code section 441.21(11) designates that properties meeting certain criteria to be classified as residential real estate. It states:

All land and buildings of multiple housing cooperatives organized under chapter 499A are to be classified as residential property for tax purposes.

*Id.*

Additionally, the Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rule when they classify property and exercise assessment functions. r. 701-71.1(2). Classification is based on the property's present use and not its highest and best use. r. 701-71.1(1). There can be only one classification per property. *Id.*

Iowa Administrative rule 701-71.1(4), related to the classification of residential real estate, provides that properties organized as housing cooperatives are classified as residential real estate. It states:

regardless of the number of separate living quarters, multiple housing cooperatives organized under Iowa Code chapter 499A . . . shall be considered residential real estate

Iowa Admin. r. 701-71.1(4).

The Iowa Supreme Court has ruled that Chapter 499A imposes an organizational test, not an “actual use” test, in determining whether a housing cooperative is a properly formed

entity. *Krupp Place 1 Co-op, Inc. v Bd. of Review of Jasper Cnty*, 801 N.W.2d 9, 16 (2011). A cooperative that is properly organized should be classified and taxed as residential real estate.

*Id.*

While the parties' arguments are primarily based on the applicability and application of the substantial compliance doctrine, our ruling rests on other grounds. We rely on precedent related to property assessment appeals given Campus Cooperative's expedited effort to cure the filing defect once becoming aware of it.

In *Geundon Holding Corp. v. Board of Review of Polk County*, 237 N.W.2d 755, 759 (Iowa 1976), the Iowa Supreme Court found it was "manifestly unjust" for a property owner to be assessed and pay taxes for a full year on a building that was destroyed by a March fire. The Court concluded that the board of review, while it was in session, should have reduced the assessment by the value of the destroyed building. *Id.* Following the reasoning of *Geundon*, we find it would be manifestly unjust to classify Campus Cooperative's property as commercial when it was previously classified residential for six years under the same statutory provision and Campus Cooperative promptly corrected the filing error upon notification of the defect and sent the amended Articles to the Assessor prior to April 15th, the statutory date by which the Assessor is required to have completed assessments. § 441.28. Campus Cooperative also provided the Board of Review with its amended Articles in advance of the protest hearing. Further, we note the evidence established that from the filing of the original Articles to the present, the property's use, its proportionate ownership, and the Secretary of State's determination of the cooperative's legal status did not change. *See* r. 701-71.1(1) (requiring that property shall be classified according to its present use and its status as of January 1 of the assessment year).



While the *Krupp Place* court declined to apply an actual use test to the classification of residential cooperative property, the general principle of classification under the Administrative Rules is current use. r. 701-71.1(1). The facts demonstrate Campus Cooperative took no action changing the property's use nor modified the property. For this reason, and because Campus Cooperative believed it was properly organized, it may have been reasonable for it to expect to retain its residential classification for 2012.

It appears the only fact that changed from 2006 to 2012 was the Assessor's and City Attorney's legal opinion of the requirements of Chapter 499A in light of *Krupp Place*. The uncontroverted evidence established that when the Assessor notified Campus Cooperative of the asserted defect in the Notice of Assessment, Campus Cooperative immediately made the necessary corrections and supplied that information to the Assessor and Board of Review. We believe the Board of Review should have given additional consideration to Campus Cooperative's immediate action to cure its arguably defective Articles and retained the property's residential classification.

In the future, we hope that similar situations can be avoided with increased communication between assessors and affected taxpayers. This communication will be fostered, in part, by provisions of Senate File 295, 2013 Iowa Acts 465, which requires that the Assessor send assessment notices by April 1 and that encourages taxpayers to contact assessors during the informal assessment review period.

We find Campus Cooperative's property should be classified residential as of January 1, 2012. The preponderance of the evidence in the record demonstrates Grove and Frisk, in good faith, intended to organize a housing cooperative under chapter 499A, and, but for a minor defect, would have strictly met the organizational requirements in that chapter. Further, they did

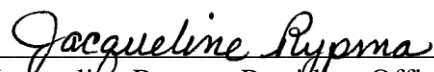
strictly meet all requirements soon after the January 1, 2012, assessment date and before the assessment roll was issued or the Board of Review was in session.

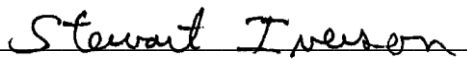
THE APPEAL BOARD ORDERS the January 1, 2012, assessment of the Campus Cooperative's property located at 136 Campus Avenue, Ames, Iowa, is modified by changing its classification to residential. Consistent with this determination, we also modify the subject property's 2012 assessment to \$277,400, which was its January 1, 2011, assessed value.

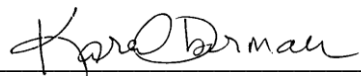
Because Campus Cooperative reserved its right to present additional evidence on its over-assessment claim, this Order does not constitute the Board's final disposition of this appeal for the purposes of Iowa Code sections 441.37A(3)(b) or 441.38B. Campus Cooperative must notify the Appeal Board in writing within 20 days if it wishes to proceed with its over-assessment claim. If Campus Cooperative does not notify the Appeal Board within 20 days, we shall then issue an additional order which shall constitute the Board's final order.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Story County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected accordingly upon this Board's forthcoming final order.

Dated this 1st day of November, 2013.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>November 1, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature	_____